

FORMAL COMPLAINT



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ORIGINAL

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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

ASSET TRUST MANAGEMENT, CORP.

Complainants,

v.

PINE WATER COMPANY, an Arizona
Corporation

Respondent.

DOCKET NO. W-03512A-06-0613

APPLICATION FOR DELETION OF
TERRITORY FROM CERTIFICATE OF
CONVENIENCE AND NECESSITY OF PINE
WATER COMPANY

Arizona Corporation Commission
DOCKETED

SEP 25 2006

DOCKETED BY

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Comes Now Complainants, ASSET TRUST MANAGEMENT, CORP., by and through its attorney undersigned, the property owners within the Pine Water Company Service Location, and respectfully petition this Honorable Commission, pursuant to *Arizona Revised Statutes §40-252*, to delete from the Certificate of Convenience and Necessity heretofore granted to the Pine Water Company, the territory described below, said territory set forth in Exhibit A, attached hereto and incorporated herein by reference as if fully set forth. In support of this Application the Complainants alleges:

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I. INTRODUCTION AND NATURE OF THE ACTION

1. The Complainants, Asset Trust Management, Corp., are property owners of Eagle Glen Subdivision located in Pine, AZ within Gila County, Arizona. (see Gila County Assessor's Parcel Information described in Exhibit A)
2. The Respondent holds a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission which provides the Respondent with the right to provide domestic water service to the property of the Complainants.
3. At the time of the filing of this action the Respondent is not able to provide satisfactory and adequate water service to the Complainants' property and has denied Complainants' request to do so as stated in the attached letter in Exhibit C.
4. At this time the Respondent cannot provide any service to the property of the Complainants because of the moratorium on new connections imposed by this Honorable Commission in May, 2005, pg 13, lines 5-6, Docket No. W-03512A-03-0279 Decision No. 67823.
5. This action is brought to have the property of the Complainants deleted from the Certificate of Convenience and Necessity of the Respondent.

II. THE PARTIES

1. The Complainants, property owners, Asset Trust Management, Corp, own parcels of property which are located in Gila County, Arizona and within the area included in the Certificate of Convenience and Necessity of the Respondent.
2. The Respondent is a public service corporation within the meaning of *Article 15 § 2 of the Constitution of the State of Arizona*, doing business in the State of Arizona which holds a Certificate of Convenience and Necessity from the Arizona Corporation Commission to provide water service within the area covered by said certificate which includes the area proposed for deletion herein.

III. BACKGROUND

1. The Complainants, property owners, had applied for water service from the Respondent.

2. The Respondent, at the time of the application up to and including the date of this filing, was not able to provide satisfactory and adequate water service in a reasonable time and at a reasonable rate.
3. The area within the Certificate of Convenience and Necessity of the Respondent has during the past twenty or more years suffered from chronic water problems and water shortages.
4. That although the Respondent has made some efforts at improving the water system within the Certificated area, the Respondent is still limited by Orders of the Arizona Corporation Commission from providing the water service requested by the Complainants. See Exhibit B, Arizona Corporation Commission Order on New Service Connection Moratorium (Docket No. W-03512A-03-0279).
5. Currently the Complainants have the capability of providing domestic water to their property provided it is deleted from the aforementioned Certificate of Convenience and Necessity of Pine Water Company.

IV. PINE WATER COMPANY, THOUGH LEGALLY REQUIRED TO DO SO, IS NOT ABLE TO REASONABLY PROVIDE ADEQUATE AND SATISFACTORY WATER SERVICE AT REASONABLE RATES TO THE COMPLAINANTS

1. The Arizona Corporation Commission rules require that the public utility "provide potable water to the customer's point of delivery." *Arizona Administrative Code, Title 14, Ch. 2, Art. 4, R14-2-407*. The rules list six specific reasons why a utility may refuse to provide service. *Arizona Administrative Code, Title 14, Ch. 2, Art. 4, R14-2-403*. None of the specified reasons apply to the Complainants in this case, therefore the Utility is required to provide service. Nonetheless, Pine Water Company has refused to provide service to the Complainants.
2. The Arizona Supreme Court has long determined that "a public service corporation is under legal obligation to render adequate service impartially and without discrimination to all members of the general public to whom its scope of operation extends." *Veatch v. City of Phoenix, 102 Ariz. 195, 427 P.2d 335 (1967) citing Wickenburg v. Town of Sabin, 68 Ariz. 75, 200 P.2d 342 (1948)*. Such obligation to provide service continues to

1 exist even where the public service provider had determines that the service would be
2 overburdened. *Travaini v. Maricopa County, 450 P.2d 1021, 9 Ariz. App. 228 (1969).*
3 Pine Water Company sites, among other reasons, purported water supply deficiencies in
4 the area as a reason to deny service as well as regulatory action which precludes them
5 from providing service. Relying on *Travaini*, Pine Water Company is required to provide
6 service adequately, impartially and without discrimination. By denying the Complainants
7 service, Pine Water Company has breached its legal obligation as a public service
8 corporation to provide water to all members of the public to whom its scope of operation
9 extends.

- 10 3. That the Pine Water Company, because of the lack of capital facilities and failure to
11 follow commission orders which resulted in this Honorable Commission ordering a
12 moratoria on its development, cannot provide water service to the properties within the
13 above referenced area at this time.
- 14 4. The Pine Water Company has failed to use its resources to develop a water system within
15 the Certificated Area sufficient in size and capability to provide for adequate and
16 satisfactory water service for the Complainants.
- 17 5. The Pine Water Company has a Central Arizona Project (CAP) Water Allocation, but has
18 failed and refuses to develop such CAP Allocation for the benefit of the properties
19 located within the Certificate of Convenience and Necessity.
- 20 6. That the fact that the Respondent is unable to provide water service to the Complainants
21 results in a hardship to the existing and future property owners within the territory to be
22 deleted.
- 23 7. That the Pine Water Company is unable and unwilling to provide adequate water service
24 at reasonable rates to the Complainants.
- 25 8. Without adequate water service, or as it presently is situated, any water service, the
26 Complainants are unable to use their property for any purpose.
- 27 9. That the deletion of the above referenced territory is in the public interest.

1 **V. MAINTAINING COMPLAINANTS' PROPERTY WITHIN THE CERTIFICATE OF**
2 **CONVENIENCE AND NECESSITY OF PINE WATER COMPANY CONSTITUTES**
3 **A TAKING OF PRIVATE PROPERTY UNDER COLOR OF LAW CONTRARY TO**
4 **THE PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES AND**
5 **THE CONSTITUTION OF THE STATE OF ARIZONA.**

- 6 1. Pine Water Company also blamed the denial of service to Complainants on regulatory
7 restrictions from the Arizona Corporation Commission, which thus constitutes an action
8 under the color of state law, having the effect of depriving the Complainants of their
9 property in contravention of the Constitution of the State of Arizona and the Constitution
10 of the United States.
- 11 2. That Pine Water Company has completely denied service to the Complainants, leaving
12 Complainants with no economically viable use of their land, constitutes an
13 unconstitutional taking. The U.S. Supreme Court, and the Arizona Supreme Court, have
14 determined that "a governmental regulation that places limitations on land use but does
15 not eliminate all economically beneficial use of the property may nonetheless constitute a
16 taking." *Mutschler v. City of Phoenix*, 129 P.3d 71 (2006) citing *Penn Central*
17 *Transportation Company v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646 (1978; see
18 also *Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency*, 535 U.S. 302,, 122
19 *S. Ct. 1465 (2002)*.
- 20 3. That the Complainants are damaged by the imposition of such condition upon them in
21 that it deprives the Complainants of their property, without just compensation being first
22 paid to the Complainants.
- 23 4. That Complainants should not bear the burden of Pine Water Company's failure to follow
24 this Honorable Commission's regulations from which the moratorium resulted.

25 **VI. RELIEF SOUGHT**

26 The Complainants pray for relief as follows:

- 27 1. For an Order deleting the territory described in Exhibit A from the Certificate of
28 Convenience and Necessity heretofore granted to the Respondent;
- 29 2. For an Order precluding the property of the Complainants from being taken without
 compensation first being paid to the Complainants therefore;

3. For such other and further orders as the Corporation Commission deems necessary and proper under the circumstances.

Respectfully submitted this 22 day of September, 2006.

GLIEGE LAW OFFICES, PLLC



John G. Gliege

Original and thirteen copies of the foregoing
Mailed this 22 day of Sept, 2006 to:

Docket Control Center
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Copies of the foregoing
Mailed this 22 day of Sept, 2006 to:

Jay L. Shapiro
Thomas R. Wilmoth
Fennemore Craig
3003 North Central Ave. Ste 2600
Phoenix, AZ 85012-2913

Pine Water Company
Brooke Utilities, Inc.
P.O. Box 82218
Bakersfield, CA 93380-2218

EXHIBIT A

Description of Properties

Including:

Legal Description
Parcel Information
Map

LEGAL DESCRIPTION

Lots 15 to 57, inclusive and Tracts A, B, and C, EAGLE GLEN, according to Map Nos. 617 and 617A; - Except Lots 1 to 14, Except that portion of TRACTS A, B, and C lying within the following described property:

A parcel of land located in the Northwest quarter of Section 36, Township 12 North, Range 8 East of the Gila and Salt River Base and Meridian, Gila County, Arizona, more particularly described as follows:

COMMENCING at the Southeast Corner of the Northwest quarter of said Section 36;

Thence North $89^{\circ}23'16''$ East a distance of 367.76 feet;

Thence North $00^{\circ}27'26''$ East, a distance of 639.05 feet to the TRUE POINT OF BEGINNING;

Thence South $76^{\circ}00'00''$ West a distance of 287.78 feet;

Thence North $09^{\circ}34'50''$ West a distance of 104.40 feet;

Thence North $17^{\circ}54'16''$ West a distance of 110.87 feet;

Thence North $24^{\circ}51'44''$ West a distance of 117.42 feet;

Thence North $29^{\circ}50'11''$ West a distance of 103.54 feet;

Thence North $58^{\circ}23'15''$ East a distance of 47.93 feet;

Thence North $39^{\circ}25'35''$ East a distance of 106.83 feet;

Thence South $34^{\circ}32'34''$ East, a distance of 73.73 feet to a point of curvature of a curve to the left, concave to the Southwest having a central angle of $33^{\circ}00'00''$ and a radius of 110.00 feet;

Thence along the arc of said curve a distance of 63.36 feet;

Thence North $88^{\circ}27'26''$ East a distance of 27.65 feet;

Thence North $02^{\circ}07'34''$ West, a distance of 9.09 feet to a point of curvature of a curve to the right, concave to the Southeast having a central angel of $63^{\circ}00'00''$ and a radius of 50.00 feet;

Thence along the arc of said curve a distance of 54.98 feet;

Thence North $60^{\circ}52'26''$ East a distance of 57.36 feet;

Thence South $57^{\circ}42'34''$ East, a distance of 115.50 feet to a point of curvature of a curve to the right concave to the Southwest having a central angle of $58^{\circ}10'00''$ and a radius of 80.00 feet;

Thence along the arc of said curve a distance of 81.22 feet;

Thence South $89^{\circ}32'34''$ East a distance of 26.00 feet;

Thence South $00^{\circ}27'26''$ West, a distance of 275.80 feet to the TRUE POINT OF BEGINNING.

**Eagle Glen Parcels for Removal from
Pine Water Co. CC&N
Lots 15-57
09/19/2006**

Gila County Assessor's Parcel #	Unit Type	Config	Lot #
301-67-015	A	ABC	15
301-67-016	B	ABC	16
301-67-017	C	ABC	17
301-67-018	A	AB	18
301-67-019	B	AB	19
301-67-020	A	ABC	20
301-67-021	B	ABC	21
301-67-022	C	ABC	22
301-67-023	A	AB	23
301-67-024	B	AB	24
301-67-025	A	ABC	25
301-67-026	B	ABC	26
301-67-027	C	ABC	27
301-67-028	A	ABC	28
301-67-029	B	ABC	29
301-67-030	C	ABC	30
301-67-031	A	ABC	31
301-67-032	B	ABC	32
301-67-033	C	ABC	33
301-67-034	A	ABC	34
301-67-035	B	ABC	35
301-67-036	C	ABC	36
301-67-037	A	ABC	37
301-67-038	B	ABC	38
301-67-039	C	ABC	39
301-67-040	A	ABC	40
301-67-041	B	ABC	41
301-67-042	C	ABC	42
301-67-043	A	ABC	43
301-67-044	B	ABC	44
301-67-045	C	ABC	45
301-67-046	A	AB	46
301-67-047	B	AB	47
301-67-048	A	ABC	48
301-67-049	B	ABC	49
301-67-050	C	ABC	50
301-67-051	A	ABC	51
301-67-052	B	ABC	52
301-67-053	C	ABC	53
301-67-054	A	AB	54
301-67-055	B	AB	55
301-67-056	A	AB	56
301-67-057	B	AB	57

NW SEC 36 T 12 N R 8 E

301-67 1/2

CODE 1276

SEE MAP 301-09

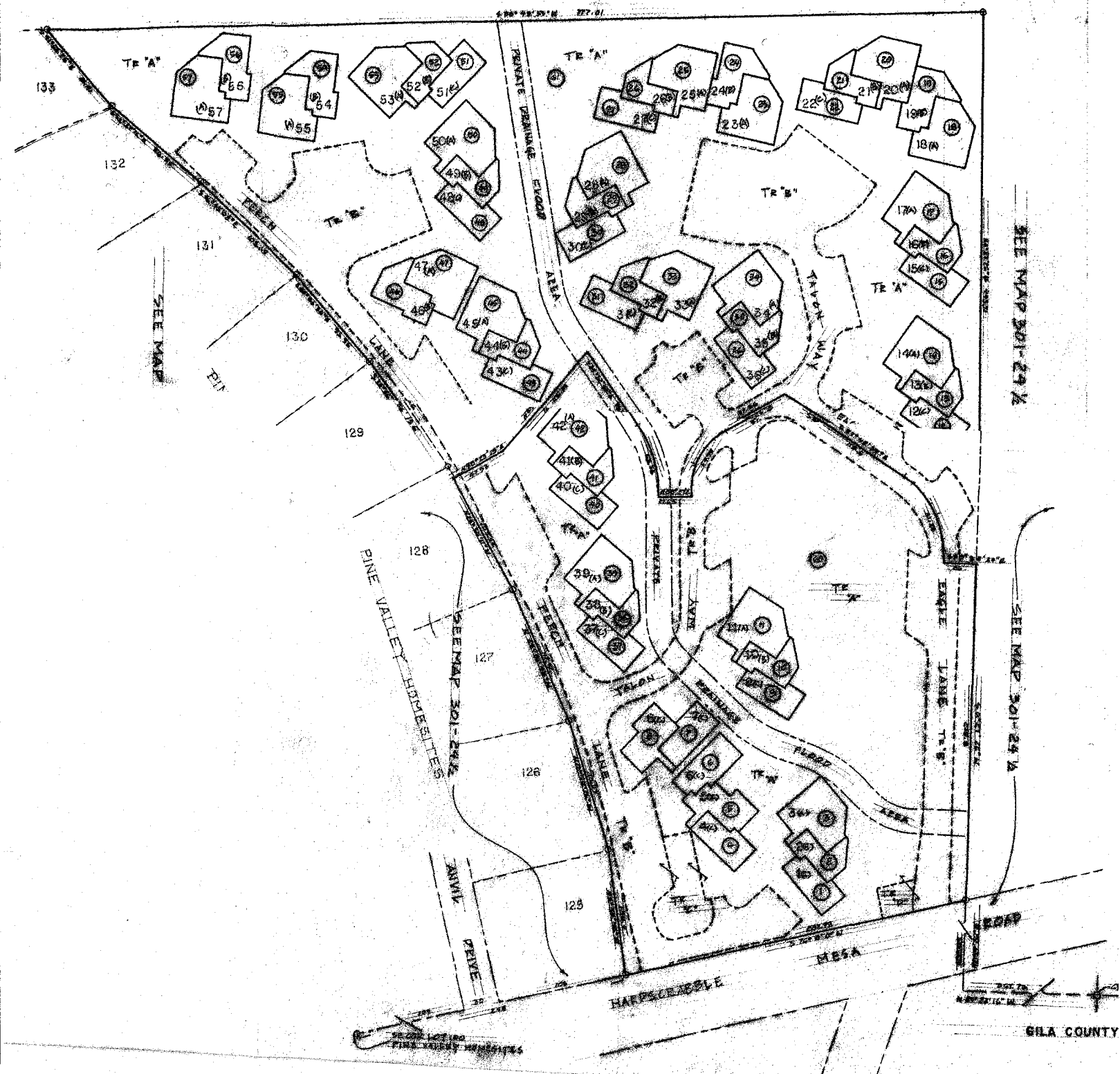


EXHIBIT B

ACC Order on New Service
Connection Moratorium
(Docket No. W-03512A-03-0279)

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

RECEIVED

COMMISSIONERS

DOCKETED

MAY 0 5 2005

MAY 0 9 2005

JEFF HATCH-MILLER Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY

NR

AZ Corporation Commission
Director Of Utilities

IN THE MATTER OF THE APPLICATION OF
PINE WATER COMPANY FOR A
DETERMINATION OF THE CURRENT FAIR
VALUE OF ITS UTILITY PLANT AND
PROPERTY, A RATE INCREASE AND FOR
APPROVAL TO INCUR LONG-TERM DEBT.

DOCKET NO. W-03512A-03-0279

DECISION NO. 67823

SUPPLEMENTAL OPINION AND
ORDER ON NEW SERVICE
CONNECTION MORATORIUM

DATES OF HEARING:

January 31, 2005 (Public Comment, Pine, Arizona);
February 14 and 25, 2005

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Dwight D. Nodes

IN ATTENDANCE:

William A. Mundell, Commissioner
Mike Gleason, Commissioner
Kristin K. Mayes, Commissioner

APPEARANCES:

Mr. Jay Shapiro, FENNEMORE CRAIG, P.C., on
behalf of Pine Water Company;

Mr. Robert M. Cassaro, in propria persona;

Mr. John O. Breninger, in propria persona; and

Mr. Jason Gellman, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

By Decision No. 67166, (August 10, 2004) the Arizona Corporation Commission ("Commission") granted Pine Water Company ("Pine Water" or "Company") a permanent revenue increase of approximately 11.8 percent pursuant to a settlement agreement entered into by Pine Water, the Commission's Utilities Division Staff ("Staff"), and other intervenors¹. Decision No.

¹ The other signatory intervenors were the Strawberry Hollow Domestic Water Improvement District ("District") and Mr. John Breninger. The only other intervenor, Mr. Robert Cassaro, did not sign the settlement agreement. The District withdrew its intervention in this subsequent phase of the proceeding.

67166 also directed Staff to prepare a Staff Report within three months addressing the issue of whether a moratorium on new water hook-ups should be reinstituted for Pine Water. Pine Water is currently subject to a limited moratorium pursuant to Decision No. 65435 (December 9, 2002), whereby the Company is limited to a maximum of 25 new service connections per month².

On November 19, 2004, Staff issued its Staff Report in accordance with Decision No. 67166. Staff recommended that Pine Water be prohibited from connecting any new customers due to Staff's determination that inadequate sources of water are available to serve additional customers. Staff also raised issues with respect to Pine Water's compliance with Arizona Department of Environmental Quality ("ADEQ") regulations.

A Procedural Order was issued on November 23, 2004 scheduling a procedural conference for December 1, 2004. The procedural conference was held as scheduled.

On December 2, 2004, a Procedural Order was issued scheduling a hearing for February 14, 2005, directing the Company to publish notice of the hearing, and establishing other filing dates.

Pine Water's president, Robert Hardcastle filed Direct testimony on January 18, 2005.

On January 21, 2005, a Procedural Order was issued scheduling a public comment hearing for January 31, 2005 in Pine, Arizona. Pine Water was also directed to notify customers of the public comment hearing by newspaper publication and other means. The public comment hearing was conducted in Pine, as scheduled, on January 31, 2005.

On February 1, 2005, Staff engineer Marlin Scott filed Rebuttal testimony in support of Staff's recommendations.

On February 8, 2005, Mr. Hardcastle filed Surrebuttal testimony.

The evidentiary hearing commenced on February 14, 2005 and continued on February 25, 2005.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

² The 25 service connection per month limit was originally established in Decision No. 64400 (January 31, 2002). Decision No. 65435 clarified that the 25 connection per month limit applies to the entirety of Pine Water's certificated service area.

FINDINGS OF FACT

1
2 1. Pine Water provides domestic water utility service to approximately 2,000 customers
3 in the Pine, Arizona area. Pine Water is owned by Brooke Utilities, Inc. ("Brooke Utilities") which,
4 along with its sister company, Brooke Water, LLC, own and operate 26 water systems serving a total
5 of approximately 8,000 customers in Arizona.

6 2. The territory served by Pine Water is subject to water shortages, where ground water
7 is the primary source of water. Groundwater in the Pine area typically flows through scattered rock
8 fractures and is heavily dependent on replenishment from rain and snow melt. As a result, Pine
9 Water's service area is susceptible to shortages in dry years, especially during summer months when
10 demand is highest.

11 3. The Pine Water system and its predecessors have been subject to new service
12 connection limits for a number of years. In 1989, due to historical water shortages in and around the
13 Pine area, the Commission ordered various moratoria on new service connections and main
14 extensions in the area previously served by E&R Water Company, Inc. ("E&R") and Williamson
15 Waterworks, Inc. ("Williamson").

16 4. In Decision No. 56539 (July 12, 1989), the Commission determined that new service
17 connections should be curtailed in E&R's service area due, in part, to a drought in the region and
18 lowering of the water table. In Decision No. 56654 (October 6, 1989), the Commission reaffirmed
19 the moratorium and also prohibited additional main extensions. The Commission directed that the
20 moratorium should remain in place until such time as E&R could demonstrate an ability to increase
21 water supplies by implementing conservation measures and by obtaining additional water resources.

22 5. In Decision No. 57047 (August 22, 1990), the Commission approved a modification to
23 the new service connection limit, allowing ten new connections per month under certain conditions.
24 However, in Decision No. 59753 (July 18, 1996), the Commission revised the moratorium, limiting
25 E&R to one single family residential connection per month on a first come first served basis. The
26 complete moratorium on new main extensions was reaffirmed in that Decision (Decision No. 59753,
27 at 12).

28 6. In August 1996, Brooke Utilities acquired E&R and Williamson and subsequently

1 reorganized seven separate water companies and systems into five subsidiaries, including Pine Water
2 and Strawberry Water Company ("Strawberry"). The reorganization was approved by the
3 Commission in Decision No. 60972 (June 19, 1998). The Pine Water system remained subject to the
4 one connection per month limit and by 2001 the waiting list for new connections had grown to 243
5 customers.

6 7. In September 2001, Pine Water filed an application seeking to increase the new
7 service connection limit to 25 per month. The Commission granted the Company's modification
8 request in Decision No. 64400 (January 31, 2002)³ based on Brooke Utilities' representations that it
9 had made significant improvements to the Pine Water system that would enable the Company to
10 provide adequate water service to new customers. Foremost on the list of improvements was Project
11 Magnolia, a pipeline interconnecting the Pine Water and Strawberry systems that is capable of
12 moving up to 700,000 gallons of water per day. The Company also claimed that water resources had
13 been enhanced as a result of repairs to system infrastructure, drilling of new wells in both Pine and
14 Strawberry, and construction of new storage capacity for both systems. See, Decision No. 64400, at
15 3-4.

16 8. As indicated above, in Decision No. 67166 (August 10, 2004) the Commission kept
17 the above-captioned docket open for the purpose of investigating whether a complete moratorium on
18 new service connections should be implemented for the Pine Water system. Staff filed its Staff
19 Report on November 19, 2004 recommending that "no new service connections be added to the Pine
20 Water system at this time" based on Staff's conclusion that insufficient quantities of water are
21 available for Pine Water to adequately serve its customers.

22 9. According to the Staff Report and Mr. Scott's testimony, Staff determined that Pine
23 Water's 19 well production sources are capable of serving a maximum of 555 average water
24 customers, based on Staff's analysis of customer usage from August 2002 to July 2004 (Ex. S-2, at
25 2)⁴. Mr. Scott testified that Staff considered the availability of water from the Strawberry system

26 ³ As amended by Decision No. 65435 (December 9, 2002) for purposes of clarification.

27 ⁴ To reach its conclusion, Staff evaluated the Company's Water Use Data Sheets for the peak month of June 2003
28 (6,400,669 gallons) and divided the usage by 30 days and the actual water users during the month (1,752) to obtain a
result of 121.78 gallons per day ("GPD") per user. This result was multiplied by a factor of 2.0 (due to the lack of peak
day water use data) to determine a value of 243.56 GPD per user, which equated to a value of 0.17 gallons per minute

1 through Project Magnolia, but concluded that Strawberry's 8 wells can produce less than 110 GPM
2 which, at continuous use at half capacity, would quickly be detrimental to water service in
3 Strawberry. Staff considers the Company's only other source of water, hauling water by truck, to be
4 an emergency measure that should not be considered for purposes of determining resource
5 availability (*Id.* at 3).

6 10. Through his testimony, Mr. Hardcastle agrees that Pine Water faces ongoing water
7 supply issues. However, he contends that adoption of Staff's recommendation will exacerbate the
8 situation if a similar limit on new connections is not also imposed on Gila County (Ex. P-1, at 2; Ex.
9 P-2, at 3). Mr. Hardcastle testified that a total moratorium for Pine Water will lead to other
10 customers outside the Commission's jurisdiction using the same water supplies currently used by
11 Pine Water. Mr. Hardcastle cites to the existence of a number of water districts that are not subject to
12 limits on connecting new customers and ongoing efforts by Gila County to develop the
13 Pine/Strawberry area despite the lack of adequate sources of water (Ex. P-1, at 3-5). He claims that
14 the Staff Report fails to recognize that a moratorium on Pine Water will not improve the water supply
15 situation because the County and developers will continue to circumvent the Commission's
16 jurisdiction by forming districts (*Id.* at 6).

17 11. The Company also contends that Staff's analysis does not take into account the limited
18 short-term nature of Pine Water's peak demand. As described above, Staff determined that Pine
19 Water's current water resources were capable of serving a maximum of 555 customers based on
20 usage data averaged over the June 2003 peak month. Despite Staff's calculation, Mr. Hardcastle
21 stated that Pine Water has been able to serve its entire base of nearly 2,000 active customer accounts
22 for several years by pumping water through the Project Magnolia pipeline and, when necessary, by
23 hauling water into the system. The Company claims that these measures are generally necessary only
24 to meet demand during summer weekends, especially holiday weekends.

25 12. At the January 31, 2005 public comment hearing in Pine, and at the beginning of the
26 evidentiary hearing, a number of Pine Water customers offered comments regarding the proposed
27

28 ("GPM") per user. Staff then divided the Company's available well production sources of 93.88 by 0.17 GPM per user to
reach its conclusion that Pine Water is capable of serving only 555 service connections during peak months (*Id.* at 2-3).

1 moratorium on new connections. Among the public comment witnesses was Harry Jones, who read
2 into the record a letter written by District 1 Supervisor for Gila County, Ms. Tommie Cline Martin
3 (Tr. 32-37). Supervisor Martin's letter raised a number of issues related to the proposed moratorium
4 and advocated using a cooperative approach between various stakeholders⁵ to attempt to develop a
5 long-term regional solution to the long-standing water shortage issues in northern Gila County. In
6 her letter, Supervisor Martin requested that the Commission limit Pine Water's new service
7 connection limit to two per month, for the next six months, in order to allow time for her to get up to
8 speed and assist in developing a solution for the water issues facing Gila County.

9 13. Although Pine Water opposes reducing the current 25 new meters per month limit, Mr.
10 Hardcastle testified that the Company was not opposed to Supervisor Martin's proposed two meter
11 per month limit as an interim measure (Tr. 193-194; 361). As a practical matter, the two connections
12 per month limitation would not cause an adverse effect on Pine Water's operations because the
13 Company added a total of only 22 new customers in 2004 (Tr. 194).

14 14. Staff continues to recommend that a total moratorium on new connections should be
15 imposed due to the lack of available water resources to Pine Water. However, at the hearing, Staff
16 witness Steve Olea testified that it may be appropriate to phase-in the moratorium along the lines
17 suggested in Supervisor Martin's letter (Tr. 316).

18 **Blue Ridge Reservoir**

19 15. During public comments and the evidentiary hearing, the possibility that Pine Water
20 could obtain water from the Blue Ridge Reservoir was a frequent topic for discussion. The Blue
21 Ridge Reservoir is a water reservoir located approximately 25 miles north of Pine in Coconino
22 County, near an area called Clint's Well. Mr. Hardcastle stated that the water rights to the reservoir
23 were formerly owned by Phelps Dodge but, through a recent transaction, the Phelps Dodge water
24 rights will be transferred ultimately to the Bureau of Reclamation. According to Mr. Hardcastle, the
25 agreement provides that up to 3,500 acre feet per year of water from the Blue Ridge Reservoir would
26 be available for Gila County, of which the first 3,000 acre feet would be allocated to the City of
27

28 ⁵ Supervisor Martin stated that she intends to bring together representatives of Pine Water, various area water districts, Gila County staff members, real estate developers, landowners, and other interested citizens.

1 Payson, and the other 500 acre feet, subject to availability, would be allocated to northern Gila
2 County, including the Pine-Strawberry area (Tr. 108). Mr. Hardcastle testified that preliminary
3 estimates of the cost of constructing pipelines to access the Blue Ridge water are \$30 million to \$40
4 million for Payson and \$10 million to \$15 million for the Pine area. Due to the projected cost of
5 building such a pipeline, with no assurance that water would be available within any given year, Mr.
6 Hardcastle stated that a Blue Ridge Reservoir project as a source of water for Pine Water "just
7 doesn't seem to make a lot of sense" (Tr. 111).

8 **Additional Storage**

9 16. Another potential solution raised at the hearing was the issue of whether it would be
10 feasible for Pine Water to build additional storage facilities. The possibilities of mining water during
11 winter months for use in the summer, as well as the use of additional storage to mitigate summer
12 weekend peaks, were discussed by various customers. Pine Water currently has approximately
13 900,000 gallons of storage capacity. Mr. Hardcastle testified that adding an additional 1 million
14 gallons of storage would cost approximately \$1 million. In response to questions regarding the
15 storage issue, Mr. Hardcastle testified that there is likely not a sufficient incremental amount of
16 production capacity available during off-peak periods that would enable the Company to build up
17 sufficient storage capacity to avert weekend peak shortages. With respect to winter storage, Mr.
18 Hardcastle claims that it is unclear whether "over-mining" in winter months would have a detrimental
19 effect on the fragile sources available during summer months (Tr. 129-130). He stated that three or
20 four years ago the Company explored building a large above-ground storage reservoir but determined
21 that such a facility was not economically feasible. According to Mr. Hardcastle, the cost of a 25
22 million gallon winter storage reservoir would range from \$750,000 up to \$7 million depending on a
23 number of factors, including the size and location of the property used; water treatment costs; cost of
24 a delivery system to the reservoir; and whether the facility was lined and what type of lining is used
25 (e.g., unlined, concrete lined, balloon storage vessel) (Tr. 130-133).

26

27 ...

28 ...

Additional Wells

17. During public comments, Mr. Thomas Filesi claimed that various residents of the Portals III community, where he is a part-time resident, have successfully drilled wells with production of approximately 30 to 35 GPM (Tr. 21). Mr. Filesi contends that the success in finding water in Portals III undermines the Company's claim that additional sources of water are not available in the Pine area. At the hearing, Commissioner Mundell requested that Mr. Filesi provide evidence substantiating his claims. No additional documentation was received in the record on this issue and Pine Water maintains that it has repeatedly been unsuccessful in drilling wells in both the Pine and Strawberry areas (Tr. 143-144).

New Improvement Districts

18. At the hearing, Staff introduced a letter dated April 22, 2003 from ADEQ to Loren Peterson of an improvement district called Strawberry Hollow informing Mr. Peterson that although Strawberry Hollow had previously been issued an Approval to Construct ("ATC") and an Approval of Construction ("AOC"), Strawberry Hollow "does not meet the requirements to begin operating pursuant to R18-4-602.B of the Arizona Administrative Code ("A.A.C.')." The letter advised Strawberry Hollow that it does not have a 100-year drinking water certification from the Arizona Department of Water Resources ("ADWR"), and therefore could not operate as a regulated public water system. The letter also indicated that Strawberry Hollow does not meet the requirements of a "community water system" which limits service to a "public water system that serves 15 or more service connections used by year-round residents or that serves 25 or more year-round residents" (Ex. S-3; Tr. 316, 322-323). Staff raised this point to suggest that it is not likely that a significant number of new districts will be formed in the near future. According to Staff, Pine Water's concerns about the formation of new improvement districts are mitigated by the difficulty improvement districts would have in meeting the 100-year supply criteria needed to qualify as a public water system (Tr. 262-264).

Other requested data

19. Commissioner Mundell requested Pine Water to provide the name of the land owner and parcel number of property for which Pine Water previously had entered into an agreement to drill

1 a well. According to Mr. Hardcastle, the property was subsequently sold and the new owner is not
2 interested in permitting access to the Company. Mr. Hardcastle did not believe there was an
3 assignment to the new owner of the Company's right to drill a well on the property (Tr. 215). In
4 response to Commissioner Mundell's request, Pine Water submitted a late-filed exhibit on March 15,
5 2005 and attached the previous owners' recorded deed as well as a map of the subject property (Late-
6 Filed Exhibit A). However, the exhibit did not include documentation showing whether there was an
7 assignment of Pine Water's right to access the property for purposes of drilling a well.

8 20. During the hearing, Mr. Hardcastle conceded that there is an emergency situation
9 generally with respect to the water supply in the Pine-Strawberry area. However, he disagreed that
10 Staff's proposed moratorium on Pine Water was an appropriate remedy and indicated that the
11 Company would not face a real crisis in its ability to serve customers for another six to eight years
12 (Tr. 218-220). Commissioner Mayes requested that the Company provide internal projections that
13 support its claim that no crisis would exist for a 6-8 year period at current growth levels and Mr.
14 Hardcastle agreed to provide that information (Tr. 220-221). In its March 15, 2005 late-filed exhibit,
15 the Company submitted an analysis performed in 2001 that appears to be a projection of customer
16 growth and capacity requirements over a number of years (Late-Filed Exhibit B).

17 21. Commissioner Mayes also requested that the Company provide actual water loss data
18 for 2004 to support its claim that the annualized water loss rate is 10 percent (Tr. 223). In its March
19 15, 2005 late-filed exhibit, the Company attached its water use data for 2004 and calculated a water
20 loss rate of 10.54 percent (Late-Filed Exhibit C).

21 **ADEQ Compliance Issues**

22 22. In the Staff Report, Staff cited several deficiencies it had discovered with respect to
23 the interconnected Pine Water-Strawberry Water system's compliance with ADEQ requirements.
24 Staff indicated that Pine Water was deficient in the following respects: failure to submit an accurate
25 drawing of the system pursuant to a Consent Order between ADEQ and E&R Water; existence of a
26 Notice of Violation ("NOV") for operating two wells (the Blooms and Weeks wells) without an ATC
27 or AOC and failure to properly maintain certain specified facilities; NOV for the interconnected
28

1 Strawberry system for failure to provide a consumer confidence report⁶; and an ADEQ report of
2 approximately 20 plant facility deficiencies that need to be corrected (Ex. S-1, at 2). In its March 17,
3 2005 late-filed exhibit, Staff attached an ADEQ Drinking Water Compliance Status Report for the
4 Pine system which indicates that the system "is currently delivering water that meets water quality
5 standards...."

6 23. In his Direct testimony, Mr. Hardcastle testified that Pine Water was not aware of the
7 1994 Consent Order between ADEQ and E&R Water when Brooke Utilities acquired E&R. He
8 stated that preparation of an as-built set of engineering drawings, that was agreed to be produced by
9 E&R as part of the Consent Order, would likely cost the Company in excess of \$100,000. Mr.
10 Hardcastle stated that such an expenditure of funds would not be a prudent investment given the
11 ongoing water supply issues facing Pine Water. He said the Company would attempt to resolve the
12 issue with ADEQ (Ex. A-1, at 9).

13 24. With respect to the Blooms and Weeks wells, Mr. Hardcastle indicated that Brooke
14 Utilities owns and operates the wells pursuant to water sharing agreements with the owners of the
15 land where the wells are located. He stated that when the wells were drilled in 1998, Brooke Utilities
16 did not believe that an ATC or AOC were required because the cost of each well was under \$50,000.
17 Mr. Hardcastle testified that the other deficiencies associated with those wells are being promptly
18 addressed by the Company (*Id.* at 10-11).

19 25. Regarding the other plant facility deficiencies identified by ADEQ, Mr. Hardcastle
20 testified that Pine Water has not been found in violation with respect to those items and ADEQ has
21 not set forth any obligations or timelines for repair of the deficiencies. He stated the Company is in
22 the process of replacing three concrete well slabs and fences around the well sites, and he expects that
23 all of the deficiencies "will be corrected promptly and certainly by the next regularly scheduled field
24 inspection" (*Id.* at 11).

25 ...

26 ..

27 _____
28 ⁶ The Company attached to Mr. Hardcastle's testimony a letter from ADEQ, dated January 12, 2005, stating that ADEQ
had closed the NOV because the Company had previously sent the required documentation (Ex. P-1, at 8-9; Ex. A).

1 Conclusion

2 26. We believe it is appropriate to place a two new residential meters per month limit on
3 Pine Water on an interim basis as a means of enabling all affected stakeholders to discuss possible
4 long-term solutions to the chronic water shortage issues that have plagued the Pine area for a number
5 of years. However, a total moratorium on main extension agreements and commercial connections
6 shall continue to be in effect in order to mitigate the potential detrimental effects associated with
7 adding a significant number of customers and/or high volume users.

8 27. We expect representatives of Pine Water and the Commission's Staff to be actively
9 involved in analyzing and discussing all feasible long-term permanent⁷ solutions to the water
10 shortage issues in Pine. Consideration should be given to, at a minimum, the following: growth
11 limits on Gila County development outside the Pine Water service area; additional well sources;
12 additional storage capacity; Blue Ridge Reservoir pipeline; CAP water trade with Salt River Project
13 ("SRP") for Fossil Creek water; deep drilling in the Coconino sandstone; and any other permanent
14 solutions that may be suggested or developed by the stakeholders and government entities. Such
15 discussions should attempt to include representatives of all affected entities and stakeholders,
16 including ADEQ, ADWR, SRP, Payson, Pine-Strawberry Water Improvement District ("PSWID")
17 and Gila County. The participation of Gila County in this effort is especially critical because
18 restrictions placed exclusively on Pine Water will not resolve the long-standing chronic water
19 shortage issues faced in northern Gila County.

20 28. Staff and the Company should submit jointly or separately, by no later than October
21 31, 2005, a report with recommendations regarding specific long-term solutions to the Pine Water
22 shortage issues. We also direct the parties to work with Gila County Supervisor Martin, and other
23 county officials, to ensure that Gila County's input is received and considered in any
24 recommendations that are proposed in the forthcoming analysis and report.

25 29. The two new residential connections per month limit for Pine Water shall be
26
27

28 ⁷ Staff witness Steve Olea defined a "permanent" solution as a "permanent, continuous source of water that can adequately supply not only the existing customers, but growth" (Tr. 309).

1 implemented on a first-come, first-served basis, with no carryover from month-to-month⁸, and shall
2 remain in effect until further Order of the Commission.

3 30. Regarding the compliance issues raised by Staff, it appears from Staff's latest filing
4 that Pine Water is currently in compliance with ADEQ drinking water requirements and, as such,
5 there do not appear to be any immediate health and safety issues raised by Pine Water's ongoing
6 operations. However, there are several matters identified by Staff that require Pine Water's attention
7 and we will therefore direct the Company to immediately contact ADEQ in order to resolve the issues
8 discussed above. Specifically, Pine Water shall seek to resolve the need for as-built engineering
9 drawings; the existing NOV for the Blooms and Weeks wells; and repair of any outstanding plant
10 facilities deficiencies. Pine Water shall file within 90 days of the effective date of this Decision a
11 report discussing how these matters have been resolved and what efforts the Company has taken to
12 ensure that similar deficiencies are not likely to reoccur.

13 CONCLUSIONS OF LAW

14 1. Pine Water is a public service corporation within the meaning of Article XV of the
15 Arizona Constitution and A.R.S. §§40-201, 40-203, and 40-252.

16 2. The Commission has jurisdiction over the Company and of the subject matter of the
17 application.

18 3. Modification of the 25 new service connections per month previously imposed on Pine
19 Water pursuant to Decision No. 64400, as modified by Decision No. 65435, is reasonable and in the
20 public interest.

21 4. Staff's recommendation for a complete moratorium on new connections should be
22 modified to allow up to two new residential service connections per month, on a first-come, first-
23 served basis, with no carryover from month-to-month.

24 ORDER

25 IT IS THEREFORE ORDERED that the modification proposed in this Decision of the 25
26

27 ⁸ The prohibition against a month-to-month carryover will limit Pine Water to connecting no more than two new
28 customers in any given month, and may require the Company to develop a waiting list to ensure that new connections are
established on a first-come, first-served basis. The "no carryover" policy is currently in effect for the 25 connections per
month limit pursuant to Decision No. 64400 (January 31, 2002).

1 new service connections per month previously imposed on Pine Water Company pursuant to
2 Decision No. 64400, as modified by Decision No. 65435, is reasonable and in the public interest.

3 IT IS FURTHER ORDERED that Pine Water Company shall be limited to two new
4 residential service connections per month, implemented on a first-come, first-served basis, with no
5 carryover from month-to-month, and such limitation shall remain in effect until further Order of the
6 Commission or until April 30, 2006, whichever comes first.

7 IT IS FURTHER ORDERED that if by April 30, 2006, a permanent solution to Pine Water
8 Company's water shortage issues is not established or if the Commission has not issued a further
9 Order to the contrary, a total moratorium on any new connections to Pine Water Company shall
10 become effective on May 1, 2006.

11 IT IS FURTHER ORDERED that all conditions placed on the installation of meters that have
12 been contained in previous Commission Decisions for Pine Water Company shall remain in effect
13 during this modified moratorium.

14 IT IS FURTHER ORDERED that a total moratorium on main extension agreements and
15 commercial connections shall continue to be in effect in order to mitigate the potential detrimental
16 effects associated with adding a significant number of customers and/or high volume users.

17 IT IS FURTHER ORDERED that representatives of Pine Water Company shall commence an
18 analysis and discussions with all affected entities and stakeholders, including Staff, ADEQ, ADWR,
19 SRP, Payson, PSWID and Gila County, in order to develop a long-term permanent solution to the
20 chronic water shortage issues in the Pine, Arizona area.

21 IT IS FURTHER ORDERED that, in the analysis and discussions undertaken by the
22 participating entities, consideration should be given to, at a minimum, the following: growth limits on
23 Gila County development outside the Pine Water service area; additional well sources; additional
24 storage capacity; Blue Ridge Reservoir pipeline; CAP water trade with SRP for Fossil Creek water;
25 deep drilling in the Coconino sandstone; and any other permanent solutions that may be suggested or
26 developed by the stakeholders and government entities.

27 IT IS FURTHER ORDERED that Pine Water Company and Staff shall submit jointly or
28 separately, by no later than October 31, 2005, a report with recommendations regarding specific long-

term solutions to the Pine Water shortage issues.

IT IS FURTHER ORDERED that Pine Water Company shall immediately contact ADEQ in order to resolve issues related to: the need for as-built engineering drawings; the existing NOV for the Blooms and Weeks wells; and repair of any outstanding plant facility deficiencies.

IT IS FURTHER ORDERED that Pine Water Company shall file within 90 days of the effective date of this Decision a report discussing how these ADEQ matters have been resolved and what efforts the Company has taken to ensure that similar deficiencies are not likely to reoccur.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 5th day of May, 2005.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

DDN:mj

1 SERVICE LIST FOR:

PINE WATER COMPANY

2 DOCKET NO.:

W-03512A-03-0279

3

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21

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23

24

25

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27

28

EXHIBIT C

Letter from Brooke Utilities, Inc.

May 16, 2006

Brooke Utilities, Inc.

P. O. Box 82218 • Bakersfield, California 93380-2218
Customer Call Center • P.O. Box 9005 • San Dimas, California 91773-9016 • (800) 270-6084

ROBERT T. HARDCASTLE
(661) 633-7526
Fax (781) 823-3070
RTH@brookeutilities.com

May 16, 2006

Curt Cluff
Asset Trust Management
7729 E. Greenway Rd., Suite 500
Scottsdale, AZ 85260

Re: **Eagle Glen Project, Pine, AZ; Pine Water Co. ACC Complaint 2006-51194**

Dear Mr. Cluff,

Thank you for your written ownership clarification dated May 11. Unfortunately, the issuance of Arizona Corporation Commission Decision No. 67823 and other preceding Orders prohibit Pine Water Co. ("PWCo.") from providing water meters or a water main extension to the subject property. Specifically, the Decision prohibits the extension of water mains within the service area (see ACC Decision No. 67823, page 13, at lines 14-16 attached hereto). Since your development would require a water main extension, regardless of previously approved agreements, PWCo. cannot accommodate your request for water service at this time.

Alternatively, you may want to consider filing an application for a variance from this Decision on behalf of your project.

Sincerely,



Robert T. Hardcastle
President

Attachments: ACC Decision No. 67823

cc

RTH correspondence file
MJ
Brad Morton, ACC

*Brooke Water L.L.C. Circle City Water Co. L.L.C. Strawberry Water Co., Inc. Pine Water Co., Inc.
Payson Water Co., Inc. Navajo Water Co., Inc. Tonto Basin Water Co., Inc.*